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In the

Supreme Court of the United States

OCTOBER TERM, 1950

No. 525

E. L. ALLEN, *et al.*,

Petitioners,

v.

BROTHERHOOD OF RAILROAD TRAINMEN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

AND

BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Texas refusing their application for writ of error to review the judgment of the Court of Civil Appeals which had reversed the judgment of the District Court of Dallas County in favor of Petitioners against Respondent for damages for fraud and discrimination.

Part One

SUMMARY STATEMENT OF THE MATTER INVOLVED

I.

STATEMENT OF THE CASE

This is a sequel to *Steele v. L. & N. Ry. Co. and Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 192.*

In both this case and the *Steele case, supra,* a labor union, accredited and acting as collective bargaining agent under the Federal Railway Labor Act for the minority class which included Petitioners, was sued for damages for discriminating against that minority class.

In the instant case, for the first time in this Court, the persons discriminated against are minority members, instead of non-members, of the labor union. In the instant case, the Petitioners were discriminated against as "extra men," who were junior in service and in union power to the "regular men," who had daily jobs.

II.

SUMMARY OF PROCEEDINGS BELOW

A. In the Trial Court

Petitioners, as a minority of the yardmen represented by Respondent union in railroad work in the Dallas-Miller yard (R. 2, 9), sued Respondent union as an entity in the District Court of Dallas County, Texas. (R. 1.) Petitioners

alleged that Respondent union was their labor union and collective bargaining agent (R. 2), and had caused them damages by defrauding them and discriminating against them (after in one earlier phase of the transaction being negligent towards them), as "extra men," in the distribution of monies to older, "regular men," instead of to Petitioners, who were rightfully entitled to the monies. (R. 8, 9, 27.)

Respondent union, in its amended original answer on which it went to trial, alleged among other defenses that: (1) Since Petitioners and their class were represented by the union, their collective bargaining agent, they were foreclosed from attacking its acts (R. 13, 14); (2) Under the Railway Labor Act, 45 U. S. C., Secs. 151 ff., the ruling of the Railroad Adjustment Board was final as to Petitioners, and a federal question is involved (R. 15); (3) The union represented Petitioners and all members of their class and was authorized by the law of the United States to bind Petitioners by its acts. (R. 19.)

The trial court overruled the first three contentions of the union in pre-trial proceedings not entered in the Transcript below, after hearing oral argument centering around *Steele v. L. & N. Ry. Co., 323 U. S. 192*, relied upon by Petitioners.

The facts, as alleged by Petitioners, were substantiated by the jury verdict and trial court judgment as follows:

The T. and N. O. Railroad had originally violated a collective bargaining agreement effective in the Dallas-Miller yard where Petitioners worked, by having road crews per-

form certain work which was supposed to be performed by yard crews. (R. 2, 48.) These violations had been brought before the National Railroad Adjustment Board, which entered blanket Award 6146 in favor of "an available yard crew that would have been called to perform the work involved on each such shift as the road crew performed the work," and on March 1, 1946, Respondent union, on behalf of those whom it represented, agreed with the Railroad that a day's pay would be paid by the Railroad to each such "available" yard crew for each violation, after a check of the records. (R. 3, 48.) "Available" has a definite meaning in railroad language, and "extra men" are the only ones "available" until they have been used on two shifts in twenty-four hours. (R. 3-4.) Accordingly, Petitioners were "available" when most of the violations occurred, instead of the more senior, and at any time more numerous "regular men" (R. 9), who had regular shifts to perform and were not "available." (R. 4, 43, 49.)

In making the check of the records mentioned in the contract of March 1, 1946, the Railroad and union listed the dates and shifts of the violations to Petitioners' satisfaction, formulating a total fund of $60,616.20 to be paid by the Railroad. (R. 4, 49.) But in designating the names of the men to be paid, the union representatives, themselves, actually made the designations (Special Issue 1a, R. 43), and designated other than "available" yard crews, namely "regular men" (R. 4, 5, 7, 43, 49), to receive approximately two-thirds of the payments.

In failing to utilize available records which would have enabled them to make this designation properly, the union representatives were negligent. (R. 27, 45.) Thereafter, in formulating and following a method of designating two regular men to be paid each time an extra man was to be paid, instead of designating strictly "available" yardmen to be paid, the union representatives unjustly discriminated against (R. 8-9, 43-44, 49) and defrauded Petitioners (R. 8-10, 45, 49), and concealed this fraud until Petitioners discovered it by obtaining a court order requiring the union and Railroad to produce the records which proved who was "available" at the time of each violation. (R. 10.) The union also committed other breaches of duty towards Petitioners. (R. 9, 44, 45, 49.)

Promptly after the designation by the union representatives of the yard crews to be paid, the Railroad paid out the full $60,616.20 accordingly, and Petitioners, unaware of the fraud until later, cashed the checks which they later found to be far insufficient. (R. 10.)

The jury found that money payable to "available" yard crews had been paid to other persons (Special Issue 1, R. 43), that Petitioners, or either of them, had not received full payment for the violations occurring when they were available and would have been called to perform the work (Special Issue 13, R. 45), and that Petitioners should have been paid certain sums. (Special Issue 14, R. 46.) Respondent union made motion for judgment non obstante veredicto on grounds including those previously raised at pretrial (R. 30, 33), and the trial court overruled this mo-

tion after oral argument centering around *Steele v. L. & N. Ry. Co., 323 U. S. 192.*

From the sums Petitioners should have been paid, as found by the jury, the trial court subtracted the insufficient payments which Petitioners had obtained from the Railroad, and inasmuch as balances resulted in favor of twelve of the fourteen Petitioners, awarded those twelve their balances due as damages against the union (R. 46), totalling $19,998.14. In its judgment, the trial court recited that such additional considerations and findings as were authorized by law had been made. (R. 46.)

B. On Appeal

The union appealed on seventy-two assignments of error to the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas at Waco, Texas. That court considered only one of the assignments of error and stated that its ruling on that one made the others immaterial. (R. 49.) The court set forth the pleadings of Petitioners and the findings of the jury and trial court, and left them undisturbed on the facts. (R. 47-49.)

On the one question considered, although both sides in their briefs had debated the doctrine of the *Steele case, 323 U. S. 192,* and also *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 163 F. 2d 289 (cert. denied, 332 U. S. 841),* the Court of Civil Appeals did not refer to these decisions, but merely held that members of a labor union cannot sue their union for damages for dereliction of duty upon the part of a representative of the union. (R. 52.)

Petitioners filed Application for Writ of Error in the Supreme Court of Texas, pointing out (1) error by the Court of Civil Appeals in holding that union members may maintain no cause of action against their union, (2) error in depriving Petitioners of due process of law under the Constitutions of Texas and the United States, and (3) error in failing to apply to the union its legal responsibilities to minorities which it represents as collective bargaining agency under the Federal Railway Labor Act. (R. 54.)

Petitioners continued to rely heavily upon *Steele v. L. & N. Ry. Co., 323 U. S. 192* (R. 60-62, 76), and the Railway Labor Act. (R. 75, 76, 77.)

The union in its Reply Brief argued that the instant case is distinguished from the *Steele* and *Tunstall decisions, supra,* because in those cases the discrimination was for racial reasons and those discriminated against were not members of the union. (R. 85.)

The Supreme Court of Texas refused the Application for Writ of Error. (R. 90.) Under Rule 483, Texas Rules of Civil Procedure, this means that the Supreme Court found the judgment of the Court of Civil Appeals to be correct and the principles of law declared in its opinion to be correctly determined. The Supreme Court of Texas wrote no opinion of its own.

Petitioners timely filed a Motion for Rehearing setting forth deprivation of their rights under the Railway Labor Act and under Amendments V and XIV of the United States Constitution. (R. 90, 94, 106.) The Motion for Re-

hearing was overruled without opinion on November 1, 1949. (R. 113.)

Inasmuch as the Statement of Facts, below, exceeds eight hundred pages in length and in addition includes bulky, voluminous records in their original form, and inasmuch as the Opinion of the Court of Civil Appeals (R. 47) does not question the evidentiary support for the First Amended Original Petition or the verdict and judgment, but states a decision on a pure question of substantive rights, Petitioners for reasons of economy, have not designated that the Statement of Facts be included in the Transcript of Record.

Part Two

OPINION OF THE COURT BELOW

The Court of Civil Appeals, in reversing the judgment of the trial court, based its decision solely upon the theory that a member of an unincorporated labor union cannot sue his union for damages. (R. 51-52.) The opinion of the court does not mention the decisions of the United States Supreme Court in the *Steele* and *Tunstall cases*, *supra*, including the dictum in the *Steele case* that the rule therein would apply equally to members as to non-members of the union.

Nevertheless, implicit in the Court of Civil Appeals decision is the ruling that the Railway Labor Act and the United States Constitution fail to secure to railway labor union members the right to a day in court for damages against their union. This ruling is implicit because even though Petitioners herein pleaded facts covering the ele-

ments of the *Steele case* doctrine, and relied upon the *Steele* and *Tunstall decisions* in their pre-trial and trial arguments in the District Court, and in their Brief before the Court of Civil Appeals, that court denied their right to sue their union.

The judgment of the Supreme Court of Texas refusing Application for Writ of Error (R. 90) and the order overruling Motion for Rehearing (R. 113) were made without an opinion, effectively adopting the opinion of the Court of Civil Appeals. *Rule 483, Texas Rules of Civil Procedure.*

Part Three

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257. Petitioners' cause is founded upon rights secured by the Railway Labor Act, Title 45, United States Code, Sections 151 ff., or by the Constitution of the United States, Amendments V and XIV.

Part Four

QUESTION PRESENTED

Does the Railway Labor Act or the United States Constitution secure to minority members of an unincorporated railway labor union, exercising its jurisdiction under that Act, the right to sue their union for their damages resulting from discrimination, fraud, and other wrongful acts committed against them by their union?

Part Five

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

I.

The judgment below should be reviewed because it removes members of unincorporated labor unions from the protection of the doctrine of Steele v. L. & N. Ry. Co., et al.

In *Steele v. L. & N. Ry. Co., et al., 323 U. S. 192*, this Court stated the doctrine that labor unions representing workers under the Railway Labor Act owe a duty to those workers to represent them without hostile discrimination, fairly, impartially, and in good faith. Although the Petitioner in the *Steele case* was not a member of the union which represented him, this Court expressly held that *minority union members*, as well as non-members, have the right to sue their union for damages and injunction. *323 U. S. 200, 204, 207.*

The Texas appellate courts, below, held that Petitioners herein cannot maintain their action for damages against their union because they are members of the union and it is an unincorporated association, and in suing it, they are attempting to sue themselves or their co-principal. (R. 51-52.) Since Petitioners based their cause of action upon allegations stating the essential elements of the *Steele case* doctrine, and relied upon that doctrine at every level of the proceedings, the Texas appellate courts necessarily

ruled, without so stating, that even when all these elements are established, the Railway Labor Act does not secure to members of unincorporated unions the right to sue their unions.

This ruling by the Texas appellate courts is in conflict with an important branch of the doctrine of the *Steele case*, or at least states an exception to that doctrine without support for that exception in the reasoning of this Court in the *Steele case*. This conflict or exception affects almost all of those railroad workers heretofore protected from union discrimination by the express language of this Court. (See Section II, this Petition, p. 12.)

Attorneys for unincorporated unions which are sued by members under the *Steele case* doctrine hereafter will most certainly rely upon the decision below as a sufficient defense. Such suits are bound to recur, particularly in view of the fact that the railroad labor unions exercise tremendous authority over their members. (See Section II, this Petition, p. 13.)

For the sake of establishing firmly the unmistakable rule that members of unincorporated labor unions share with other workers, the right to sue their unions for unfair treatment, under the Railway Labor Act, this Court should review the judgment below.

The judgment below should particularly be reviewed because it effectively denies a federal right or claim without making the slightest acknowledgement of the superior federal authority on the subject. The opinion of the Court of

Civil Appeals, as adopted by the Supreme Court of Texas, completely ignores *Steele v. L. & N. Ry. Co., et al., 323 U. S. 192*, and *Tunstall, et al. v. Brotherhood of Locomotive Firemen and Enginemen, et al., 323 U. S. 210*, both of which had been cited to all the courts below.

Attempts by state courts to base the denial of a federal right upon purely state grounds in order to avoid review by this Court are carefully scrutinized. *Patterson v. State of Alabama, 294 U. S. 600.*

If the attempt below succeeds, others are sure to follow.

II.

The question of whether the Railway Labor Act or the United States Constitution secures to members of an unincorporated railway labor union exercising its jurisdiction under that act the right to sue their union for their damages resulting from discrimination or other wrongful acts committed against them by their union is of great public importance and should be decided by this court in this case.

Of the 1,371,000 railway employees in the United States,[1] (the most who could have been affected by the *Steele case* decision), 1,084,801 are members of Railway Labor Organizations,[2] all of which are unincorporated associations.[3] These railway unions exercise even greater authority over their members than that which they exercise over non-mem-

[1] 1950 World Almanac, p. 645 (citing 1947 statistics).

[2] 1950 World Almanac, p. 381 (total of exclusively railroad unions).

[3] Handbook of Labor Unions, Florence Peterson, pp. 195-198, 303-326.

bers. For while the unions represent both members and non-members at the collective bargaining table, they represent members, only, in political recreational, and educational activities, and in the operation of coöperative business enterprises.[4]

Thus the decision below denies a right to a larger mass of people, namely unincorporated union members, than the other railroad employees whose rights are left unimpaired. And the decision below denies protection to a group which is subject to broader representation, and hence to more possible abuses, by union authorities than the group which is left protected.

Before permitting such a large, vulnerable body of workers to be declared unprotected from union abuse while their fellow workers remain protected, this Court should carefully review the decision below.

Among 1,084,801 railroad union members, in nineteen unions,[5] it is to be foreseen that some will succeed in imposing tyrannical rule over others, and some union agents will discriminate against some less powerful members. The denial of judicial review would be an encouragement to the tyrants, and to demagogic majorities, to rob the individuals and the weak minorities of their property rights and, quite conceivably, of their civil rights.

It is difficult to see how immunity from court action could be allowed such vast organizations as Respondent, herein, merely because Respondent has never incorporated.

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[4] Ibid.

[5] 1950 World Almanac, p. 381.

The rights of members of unincorporated unions are no less vital than the rights of non-members thereof, and should be no less enforceable than the rights of members of incorporated unions. Just as the fiction of incorporation has not been permitted to shield a violation of human rights in numerous cases, so the fiction of "voluntary fraternal association" should not be allowed to shield a violation of a federal right in this case.

Not only the rights of individuals and groups are involved here. Also, the very peace of the economy is at stake. If the courts do not accept actions by union members to settle questions of union abuses, then such questions will be resolved by some form of violence, such as wildcat strikes. The effective operation of the Railway Labor Act depends upon unity of union members, so that their collective bargaining agents, in dealing with their employers, will be truly representative of the labor force. Such unity should not and cannot be imposed upon union members arbitrarily by the union leaders or majority, but should be and can be secured to them by the allowance of peaceful judicial review of all questions of union bad faith discrimination.

Furthermore, if union members are denied such review, while non-union members retain it, vast multitudes of workers will quit the unions, leaving them financially and morally incapable of performing their role under the Railway Labor Act as one of the two big parties to mediation.

The specific question here bears vast import outside the railway labor field. Numerous labor unions, exceeding in total membership the railway unions, exercise similar fed-

eral authority over those whom they represent under the Labor Management Relations Act of 1947, 29 U. S. C., Secs. 141, et seq.[6]

If the *Steele case* doctrine is ever extended, as it may well be, to those unions, then the decision in this case will likewise affect all the members of those unions.

The question of whether union members shall be deprived of judicial remedy for union discriminations and frauds may even extend beyond the field of interstate commerce and cover all unions and union members, on the theory that denial of such remedy, when based solely on the fact that one is a *member* of an unincorporated union, is denial of due process of law. Unions are sufficiently large and influential in our society and vital to our economy that the rights of all union members under our Constitution may now need to be considered. Denial of a union member's right to sue his union for fraud is the same as arbitrary denial by a state court of a principal's common law right to sue his agent for wrongful representation. There is no authority for either denial, and either is denial of due process of law.

Furthermore, the issue herein when extended beyond the Federal Acts, may even involve the constitutional question of denial of equal protection of the law, no persons other than union members having been denied the right to sue unincorporated associations for fraud.

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[6] See *J. I. Case Co. v. N. L. R. B., 321 U. S. 338-339;* and *Wallace Corp. v. N. L. R. B., 323 U. S. 248,* regarding discrimination under National Labor Relations Act; and *Trailmobile Co. v. Whirls, 331 U. S. 49,* and *American Communications Association v. Douds, 339 U. S. 401-402,* under new Act.

CONCLUSION

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the court below should be granted.

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BROTHERHOOD OF RAILROAD TRAINMEN,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

OPINION OF THE COURT BELOW

The opinion of the Court of Civil Appeals can be found at page 47 of the record herein.

JURISDICTION

Jurisdiction of this Court rests upon Title 28, U. S. C., Sec. 1257. The District Court of Dallas County entered Judgment for Petitioners on June 3, 1949. Judgment was reversed and rendered by Court of Civil Appeals May 11, 1950. (R. 47.) Application for writ of error was refused by the Supreme Court of Texas, October 4, 1950. (R. 90.) Motion for rehearing was overruled November 1, 1950. (R. 113.)

STATEMENT OF THE CASE

Pertinent facts involved in this case are set out in the petition itself, and therefore are not restated here.

The Transcript of Record designated by agreement of Petitioners and Respondent (R. 114) does not include a Statement of Facts. The facts were found in favor of Petitioners by the jury verdict and all necessary facts not found by the jury were found by the trial court. (R. 46.) Those findings were left undisturbed by the Court of Civil Appeals in its decision (R. 47), so they are not in question here.

ERRORS RELIED UPON

The Court erred in refusing to hold that members of Respondent Union have the right to bring court action against the union when the union has defrauded them or discriminated against them.

The Court erred in holding, by necessary implication, that the Railway Labor Act does not secure to members of unincorporated labor unions functioning thereunder the right to sue their union for damages for fraud or discrimination.

The Court erred in holding, by necessary implication, that the Constitution of the United States does not secure to members of unincorporated labor unions the right to sue their union for damages for fraud or discrimination.

ARGUMENT

I.

IN SPITE OF THE FAILURE OF THE COURT, BELOW, TO MENTION THE RAILWAY LABOR ACT, THE UNITED STATES CONSTITUTION, AND THE STEELE AND TUNSTALL CASES, THE DECISION BELOW NECESSARILY RULES UPON A FEDERAL QUESTION.

Petitioners originally filed this suit on a set of facts obviously stated to bring Petitioners under the doctrine of *Steele v. Louisville & N. Ry. Co., et al., 323 U. S. 192.* They alleged facts showing that they were engaged as railroad yardmen and showing that there had originally been awards of the Railroad Adjustment Board in their behalf. (R. 2, 3.) They alleged that their union as their collective bargaining agent negotiated a contract with the Railroad Company, for payment of these awards to them. (R. 3.) They alleged that they were a minority in the union. (R. 9.) They alleged that the union was charged with the responsibility to represent them fairly and impartially. (R. 7.) They alleged that their union discriminated against them and defrauded them. (R. 8-10.) These allegations contain, point by point, the elements in the *Steele case* doctrine. Respondent's pleadings show further the federal question by pleading the Railway Labor Act (R. 15), and by alleging Respondent's authority as collective bargaining agent under the law of the United States. (R. 19.) The federal question is therefore clear from the allegations of fact.

The *Steele case, supra,* and the *Tunstall decisions,* which are based upon the Steele case,[1] were urged by Petitioners throughout the proceedings, from the pre-trial to the final Motion for Rehearing. Petitioners relied for their cause of action on the Railway Labor Act and the United States Constitution. (R. 54.)

The jury verdict, incorporated into the judgment below, contained findings of discrimination, failure to represent, exceeding of authority, negligence and fraud by the union against Petitioners. (R. 43-46.)

The opinion of the Court of Civil Appeals, after setting forth the allegations and the jury findings, simply concluded that members of an unincorporated labor union can not sue their union for damages. In view of the reliance of Petitioners upon the Railway Labor Act and the Constitution of the United States, this opinion was *necessarily* a ruling that even the Railway Labor Act and the Constitution of the United States do not secure to members of an unincorporated labor union the right to sue their union for damages.

The union herein may deny the existence of a federal question on the theory of existence of adequate non-federal grounds, a theory tried by the union in the *Steele case. 323 U. S. 197, footnote 1.* In the instant case, the Court of Civil Appeals avoided the opening left by the Alabama court in the *Steele case,* and omitted any reference whatsoever to the federal authorities or statute cited by Peti-

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[1] *Tunstall v. B. of L. F. & E., 323 U. S. 210.*
Tunstall v. B. of L. F. & E., 163 F. 2d 289 (cert. denied 332 U. S. 841).

tioners herein. However, since the federal question was by the force of logic necessarily determined when the Court of Civil Appeals denied Petitioners their right to sue their union, the federal question is subject to review by this Court. *Consolidated Coal Co. of St. Louis v. People of State of Illinois, 185 U. S. 203.*

The fact that Petitioners relied not only on the *Steele case* and the Railway Labor Act, but also on independent Texas authority, to support their right to sue their union does not remove the federal question from the judgment below. The necessary ruling of the judgment below was that neither the federal ground nor the state ground was sufficient to support the lawsuit, because of the relationship between the parties as member and union. This ruling cannot logically be rested solely on a non-federal ground, but is as much a judgment on a federal question as when a state court holds that a party claiming an immunity under both his State Constitution and the Federal Constitution is entitled to no immunity.

II.

THE JUDGMENT BELOW SHOULD BE REVIEWED BECAUSE IT REMOVES MEMBERS OF UNINCORPORATED LABOR UNIONS FROM THE PROTECTION OF THE DOCTRINE OF STEELE V. L. & N. R. CO., ET AL.

Steele v. Louisville and N. R. Co., et al., 323 U. S. 192, was an action for both damages and injunction by a railroad worker against the union representing him under the Railway Labor Act. Although the petitioner therein was

not a member of the union this Court applied the doctrine of that case expressly to both non-members and members of unions.

> "The fair interpretation of the statutory language is that the organization chosen to represent a craft is to represent *all of its members*, the *majority* as well as the *minority*, and it is to act for and not against *those whom it represents.*" *323 U. S. 200.*
>
> "So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft. While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union *or minority union members* of the craft without hostile discrimination, fairly, impartially, and in good faith." *323 U. S. 204.*
>
> "We conclude that the duty which the statute imposes on a *union* representative of a craft to represent the interests of all *its members* stands on no different footing and that the statute contemplates resort to the usual judicial remedies of injunction and *award of damages* when appropriate for breach of that duty." *323 U. S. 207.* (Emphasis always supplied.)

The union in that case had contended, as has Respondent union herein, that since it was collective bargaining agent for the petitioner, he could not attack in court the bargaining acts of the union. This Court throughout the opinion in the *Steele case* treats all those in the craft, union and non-union, as equal in their rights to sue the union for discrimination.

In the instant case, in spite of the clear mandate of the Supreme Court of the United States, the Appellate courts of Texas have held that *members* of unincorporated unions are excluded from the rights of judicial protection against discriminatory acts of the union.

The doctrine of the *Steele case* protects a basic right for more than a million railroad workers. For the sake of civil liberty throughout the United States, this Court should not permit that doctrine to be violated by any state court. For the sake of the overwhelming majority of those workers, who are members of unincorporated labor unions, this Court should not permit that doctrine to be narrowed down to a mere fraction of the workers originally protected by the plain intent of the *Steele case* decision.

At least, this petition should be granted so that such a violation and narrowing will not be permitted to stand without a thorough review.

In addition to the guarding of civil rights, there is another reason why the opinion below should be reviewed. That reason is for the sake of maintaining national uniformity of judgments. Petitioners interpret the *Steele case* doctrine as assuring judicial protection of both members and non-members of the unions functioning under the Railway Labor Act from discrimination by those unions. In Texas, it has been held in the judgment below that that doctrine does not apply to members. The Texas decision cited four authorities only. All four of these authorities were from other states. Some states have held that members of unions can sue their unions for damages. *Deeney v.*

Hotel and Apt. Clerks Union, 134 P. 2d 328; Grand International Brotherhood of Locomotive Engineers v. Crouch, 184 So. 173.

The judgment of the Court of Civil Appeals, below, is the first one holding that in spite of the right of court action guaranteed by the Railway Labor Act, as interpreted in the *Steele case*, members of a union functioning under that act cannot sue their union for discrimination. If the judgment below is permitted to stand, unreviewed, there will be differences among the states as to whether or not the rights protected in the *Steele case* are exercisable by members of unions under state laws. The judgment below should be reviewed if for no other reason than to assure national uniformity on this point.

III.

THE QUESTION OF WHETHER THE RAILWAY LABOR ACT OR THE UNITED STATES CONSTITUTION SECURES TO MEMBERS OF AN UNINCORPORATED RAILWAY LABOR UNION EXERCISING ITS JURISDICTION UNDER THAT ACT THE RIGHT TO SUE THEIR UNION FOR THEIR DAMAGES RESULTING FROM DISCRIMINATION OR OTHER WRONGFUL ACTS COMMITTED AGAINST THEM BY THEIR UNION IS OF GREAT PUBLIC IMPORTANCE AND SHOULD BE DECIDED BY THIS COURT IN THIS CASE.

In *Steele v. Louisville and N. R. Co., 323 U. S. 192*, this Court decided that the question of the right of those represented by a union under the Railway Labor Act to sue

the union was a question of such great public importance as to merit review by writ of certiorari. The same considerations which led this Court to review the *Steele case* are applicable to the instant case.

It is true that now the broad question has already been reviewed once, and theoretically should not have to be reviewed again. Petitioners adhere to the belief that the *Steele case* decision has already determined that union members, as well as non-members, have the right to sue their unions for discriminations practiced in collective bargaining under the Railway Labor Act. In the *Steele case*, petitioner was not a member of the union, and therefore the ruling of this Court as to members' rights was technically dictum. But it is obvious from the decision that this Court had thoroughly considered the entire question of minority members and non-members, and had decided they were all entitled to the same right of protection against discrimination and bad faith. Petitioners are convinced that that ruling should have bound the appellate courts, below, in the instant case, beyond any question. However, the judgment below attempts to distinguish the *Steele case* from the instant case by distinguishing the rights of non-members from members of a labor union, and unless reviewed, will effectuate such a distinction. Petitioners believe that it is a matter of great public importance that this distinction be reviewed.

The reasons of public importance why the particular question of rights of *members* against their unions should be reviewed fall under five main headings.

A. *Federal labor-management legislation, and the coördination of the national economy, assume and are dependent upon the just representation of members of labor unions by their unions, but the judgment below threatens the ability of the unions to continue their function under this legislation and in this economy.*

1. First, the judgment below makes union membership so disadvantageous that the unions will lose members.

The Railway Labor Act was enacted by Congress under a reasonable assumption, inherent in the Act, that when collective bargaining was entrusted administratively to two legal persons, the employer and the union, the union would actually and fairly represent *all* the employees.

The Railway Labor Act was enacted to improve labor-management relations in the railroad industry by removing causes of economy-hampering strikes. So long as vast multitudes of workers were functioning anarchically, with different unions representing different employees of the same craft in the same railroad company, and other employees representing themselves, it was difficult to establish an administrative procedure whereby disputes and grievances could be settled peacefully and expeditiously. This difficulty was solved by narrowing the disputes generally down to two legislatively recognized parties, the employer and the union, and by effectively placing in the union the exclusive bargaining authority for all the workers in a given craft in a given railroad company as to collective agreements, and the usual bargaining author-

ity as to individual grievances.[2] This consolidation of employees into one agency enabled bargaining contracts between employer and employees to be universally effective, and disputes and grievances to be decisively settled, even if the matter had to be taken to the National Mediation Board or the National Railroad Adjustment Board for administrative decision. Thus were avoided most of the organizational causes for petty and major violence, wildcat and organized strikes.

The position of the union in the structure of the Act is clearly as a focus of the divergent needs, desires, and rights of those whom it represents. This position is vital to the successful functioning of the Act. This position is jeopardized by the judgment below.

The union must have membership to survive. It must have large membership, paying large dues, to carry on all the functions required of it by the Act. But if the judgment below stands, and a worker loses his protection against union discrimination and bad faith by joining the union, why will he join? Informed employees who cherish their civil rights will not subject themselves to the rule of a body in which minorities have no protection by due process of law. Those who have not joined the union will not. Those who are now members of the union have good ground to consider it wise to resign or to let their membership lapse. Particularly when a lawsuit based on the *Steele case* doctrine is in the offing, attorneys will advise the wronged members to resign from the union before pro-

[2] See *Elgin, Joliet & E. Ry. Co. v. Burley, 325 U. S. 711.*

ceeding further, lest their right to court action be denied because of membership, under the rule of the judgment below.

The judgment below is a probable cause of great instability developing in the membership of labor unions under the Railway Labor Act. It thus tends to undermine the labor union, one of the two great pillars on which the entire collective-bargaining structure of the Railway Labor Act is founded.

Disruption of collective bargaining in the railroad industry is a sure cause of disruption of the industry, itself. The railroad industry is an industry vital to the national economy in peace and war, and it is a matter of utmost public importance that judgments of state courts which through their effect on federal legislation, affect the successful functioning of that industry be reviewed.

2. Second, even if union membership were not decreased by the effect of the judgment below, the judgment would lead to more wildcat strikes and violence because it removes the remedy of judicial action from minority members of unions who feel that the union has discriminated against them. It is an elemental principle of the science of politics that government is established in order to substitute a peaceful method of settling disputes for a violent one, and in our society, the judicial process is the ultimate peaceful method of settling disputes. Remove that process, and you increase the likelihood of resort to violence to settle disputes. Such violence, in the form of wildcat strikes or work stoppages, or jurisdictional battles in the form

of mob action, or otherwise, can be highly disruptive to the railroad industry, against the intent of the Railway Labor Act.

B. *The judgment below affects civil rights of a substantial number of the citizens of the United States.*

Of the 1,371,000 railway employees in the United States,[3] almost all are represented by railroad labor unions, by virtue of the Railway Labor Act. Of these, 1,084,801 are *union members.*[4] Of these union members, thousands are in Texas, alone, in a Texas railroad labor force of 56,429.[5]

Labor unions under the Labor-Management Relations Act of 1947, 29 U. S. C., Secs. 141, et seq., represent millions of additional members.

All labor unions in the United States represent 16,000,000 members.[6]

These labor unions today engage in far-flung activities. Unions represent workers in determining their wage scales, seniority rights, and working conditions. Unions represent workers in influencing legislation and in electing public officials. Unions utilize publicity and propaganda devices not only in direct connection with the workers' jobs, and with legislation directly affecting labor-management relations, but also in connection with the economy of our nation in other fields, such as agriculture, public utilities, government health insurance and international affairs.

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[3] 1950 World Almanac, p. 645 (citing 1947 figure).

[4] Ibid, p. 381 (total in exclusively railroad unions).

[5] Texas Almanac, 1949-50, p. 322.

[6] World Almanac, 1950, p. 381.

Unions spend union dues in these broad political activities and economic interests.

Furthermore, unions operate banks, office buildings, recreation buildings, pension trusts, insurance businesses, and numerous other businesses, large and small. Unions are employing increasing numbers of administrative, advisory, clerical, maintenance and operative employees, who do everything from conducting research in the field of agricultural economics to chauffering union officials and janitoring union offices. Most of these employees would be expected to be union members.

Unions thus have a vast and powerful influence over the economic, social and political lives of their members, and exercise a substantial influence in the economy and politics of our nation, on behalf of those members and with the aid of their dues.

Unions are frequently in a position to deny a man from being hired or to have him discharged on their own recommendation or demand. The employer cannot afford the risk of a strike or even litigation or administrative proceeding for just one individual employee or even a group of employees whom the union agents do not like. Many unions are powerful enough throughout a craft to block a blackballed man from employment anywhere in that craft. They can thus force a man to change his method of livelihood.

Unions are frequently in a position of having control over the distribution of a fund among union members, just as Respondent union had in the instant case in dividing up the $60,616.20 under the contract of March 1, 1946.

Thus it is established that unions have vast power and influence over both the civil and property rights of large numbers of workers, both under the Railway Labor Act and outside that Act. Most of these unions are unincorporated associations, as the one in the instant case.

And yet the judgment below would leave the unincorporated union inviolate from civil damages for practicing fraud, discrimination, negligence, failure of representation, or exceeding of authority against one or more of its individual members.

If the judgment below stands, an incentive will be afforded to unscrupulous union leaders to take workers, particularly the ignorant workers, into membership and there to exploit them without fear of court action. For example, as to Negro minorities, the union could take them all in. Then it could suppress them. It could restore with impunity the discrimination against Negroes which the *Steele case* decision intended to place under judicial review. The union could suppress not only Negro minorities, but even Negro majorities, either by refusing to let them vote, or by setting up elaborate voting machinery which would reduce their voting strength. Could the Negroes then seek the protection of the courts for injunction or damages? They could not, if the judgment below stands; because that judgment holds that a union member cannot sue his union, as that would be suing himself. Another *Steele case* or *Tunstall*[7] or *Graham case*[8] would be impossible, so far as the

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[7] *Tunstall v. B. of L. F. & E., 323 U. S. 210.*

[8] *Graham v. Brotherhood of Locomotive Firemen & Enginemen, 338 U. S. 232.*

Negro union members were concerned. They would be limited to their appeal within the union up to the superiors who appointed the agents who discriminated against them, as in the instant case.

Such tyranny could reasonably be expected not to be limited to Negroes. It might well be tyranny of older men against younger men, as in the instant case, or tyranny of Communists in control of a union against anti-Communists, or of conservatives in a union against liberals, or of one set of union bosses against those who seek to depose them. If a person is tyrannical against one group, he tends to become tyrannical against other groups.

The right to bring action against one's union for damages for discrimination is not the only civil right in danger under the judgment below. The union, under the theory of the judgment below, could bring economic pressures to bear upon its members so that they would be afraid to espouse certain views in public, or would be afraid to vote in public elections, or would be afraid to attend certain churches, and the members would have no protection. Even resignation might be made so difficult that by the time it was completed and the member was thereby free to file suit, the union purpose would be accomplished against the member.

C. *Since the theory of the judgment below would apply not only to union discriminations under the Railway Labor Act, but also to discriminations by unions under all federal collective-bargaining legislation, review of the judgment below is of all the greater public importance.*

It is probable that an action like the *Steele case* will be brought under the Labor-Management Relations Act of 1947, or under some other federal legislation on labor-management relations. The doctrine of the *Steele case* may well be applied to such other federal legislation. If it is, the judgment below would likewise bar actions of union members against their unions to protect against union discrimination under such other federal legislation. Thus the judgment below is probably of far broader import than in the railroad industry.

D. *Even if, contrary to probability, the application of the judgment below would remain confined to Texas members of unions under the Railway Labor Act, the harmful effects of that judgment on the national economy and the rights of large numbers of workers is sufficiently great to merit review by this Court.*

In addition to having 56,429 railroad employees, Texas has 15,574 miles of first-main railroad track, the largest track mileage of all the states.[9] Texas has a large share of the defense industry of the nation. Work stoppages, strikes, and labor disorder on the interstate railroads of Texas, alone, would be of grave detriment to the economy of the nation in either peace or war, and the limitation upon the rights of Texas railroad union members to sue their union is a substantial factor in the aggregate civil rights of the entire populace.

[9] 1949-50 Texas Almanac, p. 321, 322.

E. *If the judgment below is considered not to be of sufficiently great importance for review on the question of the rights of members to sue their union under federal labor management legislation, there are constitutional questions here which are of sufficiently great importance to merit review by this Court.*

1. Denial of Petitioners' right to sue their union for discrimination and fraud, when that denial is based merely upon Petitioners' membership in the union, is denial of due process of law.

Petitioners submit that there is *no* authority, in Texas or elsewhere, to support the ruling below that a member of an unincorporated labor union (or any other unincorporated association) cannot sue his union for damages for fraud or for discrimination. It is the universal rule, even in jurisdictions where unincorporated associations are ordinarily held inviolate from damage suits by their members, that such damage suits by their members are nevertheless allowed where the association is found to have been fraudulent or in bad faith.

Likewise, the rule that one cannot sue one's co-principal for the derelictions of a common agent, which the opinion below has attempted to inject into the instant case, is universally and unanimously inapplicable to cases where the agent has acted fraudulently or in bad faith toward one principal at the benefit of another. *Blair, et al. v. Baird, et al., 94 S. W. 116; Ringer, et al. v. Wilkin, 32 Idaho 330, 183 P. 986; Boss, et al. v. Tomaras, et al., 232 N. W. 229.*

Besides, the union being sued in the instant case cannot conceivably be classed as the co-principal of Petitioners. The undisputed pleadings and the findings of jury and court, as well as the common law, establish without other possibility that the union sued herein was the agent, not the co-principal, of the Petitioners.

In the absence of some special legal bar, every legal person has a right to sue every other legal person for damages caused by the fraud of that other legal person or its duly authorized agent.

In addition to this common law right, the Railway Labor Act statutorily secured to all non-members and members of unions exercising their authority thereunder the right to sue their unions for damages for discrimination or bad faith dereliction. In spite of the Petitioners' common-law and statutory rights to sue, appellate courts below, without any judicial precedent, arbitrarily established a formerly non-existent special legal bar to Petitioners suing their union for damages for discrimination and fraud.

This action of the appellate courts of Texas is a denial to Petitioners of their right to due process of law, secured by the Fourteenth Amendment from depredation by the state or any of its agencies, including state courts.

2. Denial of Petitioners' right to sue their union for discrimination and fraud, when that denial is based merely upon Petitioners' membership in the union, is denial of equal protection of the law.

a. The judgment below denies to members of a union the right to sue their union as a protection from its discrimination and fraud against them. All other persons, including non-members represented by the union, have the right to sue that union for damages for discrimination or fraud. There is no proper ground for distinguishing members from non-members in such cases. Therefore, the appellate courts below have denied to Petitioners the equal protection of the law.

b. The judgment below denies to Texas members of a union the right under the Railway Labor Act to sue their union as a protection from its discrimination and fraud against them. Members of unions under the Railway Labor Act have that right elsewhere.

Therefore, the appellate courts below have denied to Petitioners the equal protection of the law.

c. The judgment below denies to these Petitioners the right under the Railway Labor Act to sue their union as a protection from its discrimination and fraud against them. Petitioners are the only citizens of the United States who have been denied that right. (The *Kordewick case*[10] expressly eliminated the discrimination and fraud allegations.) There is no legal authority for such denial. Up until this case, the Texas appellate courts had frequently permitted union members to sue their unions for damages. *St. Louis and S. W. Ry. Co. of Texas, et al. v. Thompson, et al., 192 S. W. 1095; McCantz v. Brotherhood of Painters,*

[10] *Kordewick, et al., v. Brotherhood of Railroad Trainmen, et al., 181 F. 2d 963.*

D. & P. of America, 13 S. W. 2d 902; International Printing Pressmen & Assistants Union v. Smith, 145 Tex. 399, 198 S. W. 2d 729.[11] In *Lundine v. McKinney, 183 S. W. 2d 265,* union members were held to have the right to sue their union for damages, injunction, and recovery of possession of property on the grounds of fraud and discrimination. In *Screwmen's Benefit Association v. Benson, 13 S. W. 379, 21 S. W. 562,* it had been held that members of unincorporated beneficial associations may sue their associations for damages. Likewise, it has always been the unanimous authority in Texas that even internal matters within an unincorporated association are subject to judicial review where fraud, oppression, or bad faith are shown. *Sawtell v. Feser, 235 S. W. 960; Fraser, et al. v. Buck, et al., 234 S. W. 679.* In *Brotherhood of Railroad Trainmen v. Cook, 221 S. W. 1049, error refused,* a union member was held to have the right to sue his union for benefits under an insurance contract with the union.

And yet, in the instant case, with no Texas authority, and no applicable authority from elsewhere concerning fraud and discrimination, the Texas appellate courts held that Petitioners had no right to sue their union because they were members thereof. The pleadings, verdict, and judgment of the trial court for Petitioners were thrown out as having no bearing in court, while other union members with the same common law grounds and without the same

[11] In the first two of these three cases, the union members who had been wrongfully expelled were permitted to recover damages, although since the expulsions were found void, the members were still members when they sued.

grounds under the Railway Labor Act have been given the protection of the courts in Texas. Therefore, Petitioners have been denied the equal protection of the law.

3. There is here also a question of Petitioners' rights under the Fifth Amendment having been denied.

In his concurring opinion in the *Steele case, supra*, Justice Murphy raised this point,[12] but it was not necessary to decide it therein. Petitioners do not feel it necessary to decide it herein, either, but if this Court does not agree that review is merited on the other grounds set forth herein, then it should be merited on this one.

As an instrument of the federal statute, Respondent Union herein was functioning as a quasi-legislative or quasi-judicial body, and was charged with compliance with the Fifth Amendment enjoining federal bodies from denying persons of due process of the law. In defrauding and discriminating against Petitioners, in denying and obfuscating their appeal within the union, and in joining the Texas appellate courts in obtaining the denial of their right to sue in court, the Respondent union herein violated the Fifth Amendment to the Constitution of the United States.

IV.

MEMBERS SHOULD BE SECURED IN THE SAME RIGHTS OF COURT ACTION AGAINST THEIR COLLECTIVE BARGAINING AGENTS AS NON-MEMBERS ENJOY.

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[12] *Steele v. L. & N. Ry. Co., 323 U. S. 208.*

There is ample authority to support a judgment herein sustaining the Petitioners in their right as members to sue the union.

This authority is headed by *Steele v. Louisville and N. Ry. Co., 323 U. S. 200, 204, 207.* It is buttressed by the decision of the United States Court of Appeals for the Fourth Circuit in *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 153 F. 2d 289 (writ of certiorari denied 332 U. S. 841).*

That a union bears a similar relationship and responsibility to its members as an ordinary agent bears to his principal was determined by this Court after long formulation of opinions in *Elgin Joliet & E. Ry. Co. v. Burley, 325 U. S. 711.*

Insofar as the decision herein denies union liability to members for discrimination and fraud against them, the effect is that hereafter, a union in Texas will be able to discriminate freely against any of its members, and to defraud them, without fear of liability. If union officials don't like a member because he is a dissenter, or for any other reason, the union can with impunity deprive him of rights supposedly accruing to him under contracts with his employer.

Only the union agents, if even they, will be liable. By designating to perform such fraudulent services union agents who are judgment-proof, wealthy unions can deprive individual members or membership minorities of valuable property rights with *absolutely no* opportunity for actual financial redress.

Generalizing on the far-reaching effects of this decision, it can be stated categorically that the logical effect of the decision is to deny to union members any redress against their union for *any* wrongs inflicted by their unincorporated union, whether of omission or commission, of negligent or willful aspect. The opinion below fails to recognize a single exception, not even fraud. This is a tragic new rule for courts to create out of thin air.

In brief, the logical effect of the decision of the Court of Civil Appeals herein is to create absolute irresponsibility of a union to its members, and that for the first time in history.

The proper rule would be that unions are responsible to their members; that when a union defrauds a member, and discriminates against a minority of members, the union is liable to that defrauded member and to those minority members for any damages it may have thereby caused them. That rule should at least be maintained in respect to unions exercising authority under the Railway Labor Act.

While the Court of Civil Appeals opinion attempts to leave the impression that the union representatives are the common agents and the sole common agents involved herein, the correct analysis is that the union is the common agent, quite suable by its principals regardless of the co-principal rule, and that the union representatives are the duly authorized agents of the union, also suable at the option of the wronged union members. Thus, in the chain of agency involved in the instant case, the union is in

turn the agent of its members and the principal of its representatives. As principal of its representatives, the union is by the basic laws of agency liable for their torts committed in the course of their agency.

This right to sue one's immediate agent, and not to be confined to suing the agent's agents who commit the particular wrong, is an important one, because the agents of one's agent are too often without property sufficient to satisfy the damages, so that damages adjudged against them would remain uncollected.

In the interest, then, of keeping the doctrine of the *Steele case* enforceable, and in the interest of soundly applying the law of unincorporated associations and of agency to damage actions by members against their unions under the Railway Labor Act, the judgment below should be reviewed and reversed.

V.

WORKERS WHO ARE UNJUSTLY DISCRIMINATED AGAINST BY THEIR COLLECTIVE BARGAINING AGENT SHOULD HAVE THE RIGHT OF COURT ACTION REGARDLESS OF WHETHER THE DISCRIMINATION IS BASED ON RACE PREJUDICE, RELIGIOUS DOGMA, PARTISAN POLITICAL BELIEF, PERSONAL FAVORITISM, PERSONAL ANIMOSITY, FRAUD, OR ANY OTHER GROUND WHICH IS NOT JUSTLY APPLICABLE TO THE FAIR, IMPARTIAL REPRESENTATION OF THE WORKERS IN A CRAFT.

If Respondent argues herein, as he has below, that the instant case is distinguishable from *Steele v. Louisville & N. Ry. Co., et al., 323 U. S. 192*, because Petitioners herein were not discriminated against on racial grounds, this Court should confirm by rule the dictum of the *Steele case* that a railway labor union does not have "authority to make among members of the craft discriminations not based on . . . relevant differences." *323 U. S. 203.*

The *Steele case* opinion with studied care uses language which covers a far broader scope of discriminations than those based on race differences:

> "This does not mean that the statutory representative is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, the competence and skill with which it is performed, are within the scope of the bargaining representations of a craft, all of whose members are not identical in their interest or merit. Without attempting to mark the allowable limits of differences in the terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences." *323 U. S. 203.*

The wording, "Discriminations not based upon such relevant differences," could and should plainly apply to discriminations such as that exercised by the union against

Petitioners herein, where instead of designating the "available yard crew that would have been called," the union designated two senior, regular men to every junior, extra man, although the latter were first "available" and the former were practically never "available." In addition to discrimination, the jury below found fraud, failure to represent, exceeding of authority, and negligence of the union in various steps of the union's discriminations against Petitioners. Surely, the jury verdict, alone, particularly the fraud finding, establishes such distinctions not based on "relevant differences," as should entitle workers to court protection in the form of damage action.

The scope of the *Steele case* ruling is further indicated in Footnote 1 of the dissenting opinion in *Bay Ridge Operating Co. v. Aaron, 334 U. S. 446*, stressing a point on which there was no apparent disagreement in the Court:

> "Of course if it can be shown that particular employees — for reason of color, *lack of seniority*, or *anything else* — were not fairly or properly represented in the collective bargaining agreement, and were discriminated against and forced into a less desirable class of work, not because of accident or their own desire, but because of the deliberate policy of the employers, *the union*, or both, we cannot treat the agreement, made for the generality of longshoremen, as binding on them as well." *334 U. S. 493.* (Emphasis supplied.)

If it reviews the judgment below, this Court will of necessity consider the direct application of the doctrine of the *Steele case* for the first time to a case involving discriminations or bad faith arising out of other than racial differences.

CONCLUSION

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the court below should be granted.

Respectfully submitted,

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In the

Supreme Court of the United States

OCTOBER TERM, 1950

No. 525

E. L. ALLEN, *et al.*,
Petitioners,

v.

BROTHERHOOD OF RAILROAD TRAINMEN,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

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RESPONDENT'S

BRIEF

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Supreme Court of the United States

OCTOBER TERM, 1950

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E. L. ALLEN, *et al.*,

Petitioners,

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BROTHERHOOD OF RAILROAD TRAINMEN,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondent respectfully prays that a writ of certiorari to review the judgment of the Supreme Court of Texas refusing Petitioners' application for writ of error to review the judgment of the Court of Civil Appeals be denied, and Respondent, in the main, bases its Brief in Opposition upon the following quotation from the opinion of the Court below:

> "If Weiss and Andrews, or either of them, committed any fraud or failed in his or their duty to properly represent the appellees and as the result of which they sustained damages, they could be held

accountable to the appellees therefor, because a principal can sue his agent for such dereliction of duty. This principle is so well established that it needs no authorities cited to support the same. The appellee's co-members, if they received money to which they were not entitled but to which the appellees were, the appellees would have a cause of action against such members as individuals. The appellees and the other several hundred thousand members are principals, and we are of the opinion that one or more principals can not sue their co-principals and require them to respond in damages for the dereliction of duty of a joint agent. Weiss and Andrews were just as much the agents of appellees as they were the agents of the other members of the Brotherhood." (R. 51-52.)

OPINION BELOW

The opinion of the Court of Civil Appeals (R. 47-53) is reported at *230 S. W. 2d 325*. The Court of Civil Appeals of Texas as shown above, held that Petitioners, members of the unincorporated Brotherhood of Railroad Trainmen, may not sue their co-principals, the Brotherhood, for the dereliction in duty of a joint agent under the particular facts of this case. (R. 51-52.) The judgment of the Supreme Court of Texas refusing application for writ of error is found at page 90 of the Record.

JURISDICTION

This Honorable Court should not exercise jurisdiction of this cause for the reason that there is no Federal or Constitutional question necessary to the determination of this case, and no interpretation of a Federal Statute is involved herein. (R. 47-52.)

QUESTION PRESENTED

The question presented is one of local law of agency, and is set forth in the opinion of the Texas Court of Civil Appeals: "Can a member in good standing of the Brotherhood sue the Brotherhood for damages for dereliction of duty upon the part of an agent of the Brotherhood?" (R. 49.)

Under the Texas law of agency, it was properly held that a principal (the Petitioners) may not sue his co-principals (the Brotherhood), for the dereliction in duty of joint agents (Andrews and Weiss). (R. 51-52.)

STATEMENT

The statement of the case made by Petitioners is at variance with the statement in the opinion of the Court of Civil Appeals of Texas. (R. 47-52.) Petitioners' allegation that there is undisputed evidence to sustain the jury's findings, is contradicted by the opinion, which discloses that there was not sufficient evidence of probative force to justify the jury's findings to any issue submitted. (R. 47-52.) The holding indicates that under the evidence, the jury finding as to negligence, discrimination, exceeding of authority, failure to represent, and fraud on the part of the Brotherhood was erroneous. Actually, each Petitioner who testified as to fraud stated that he did not think the Brotherhood had defrauded him. (R. 86.)

The Constitution of this fraternal benefit Association prevents disgruntled members from filing suits of this nature. The Court of Civil Appeals of Texas was correct in declaring that an unincorporated fraternal benefit Asso-

ciation could not be held to respond in damages for the acts of the joint agent of the Petitioners and the Brotherhood. (R. 47-52.)

While the case was reversed and rendered on this fundamental principle, it could have been reversed and rendered on numerous assignments of error. Among them are: Point 4, shown on page 9 of Brotherhood's Original Appellate Brief in the Court of Civil Appeals, dealing with the statutes of limitation of the State of Texas barring the cause of action (R. 31, 113); failure of Petitioners to exhaust remedies within the order (R. 14-15); and Point 6 (the testimony on this point was undisputed), dealing with the fact that each of the Petitioners accepted checks issued by the former defendant railway company in complete accord, satisfaction and release of any claims under Award 6144 and 6146 of the Railway Adjustment Board. (R. 33.) If any of the Petitioners were entitled to more than they received under the Award, their claim was against the railway employer and not against the Brotherhood. When Petitioners, on their own motion dismissed the joint defendant, Texas & New Orleans Railroad, from this suit (R. 26, 33), it was an abandonment of their attempted cause of action against the joint defendant, Brotherhood of Railroad Trainmen. (R. 29.)

Respondent contended throughout this cause that these Petitioners were not entitled to the award money for which they sued, since under the contract a day's pay would be paid by the Railroad to "an available yard crew that would have been called to perform the work involved on each shift as the road crew performed the work." (R. 13.) The

Court of Civil Appeals and the Supreme Court of Texas were evidently satisfied with the Respondent's evidence showing that most of the Petitioners were out of Railway service for periods ranging from one month to eighteen months during the period of violation. (R. 37, 39, 81.) Thus, Petitioners were neither "available" nor would they have been called to perform work.

Petitioners' contention at pages 8 and 12 of their Petition for writ of certiorari that the Court of Civil Appeals of Texas deprived Petitioners of due process of law under the 14th Amendment to the Constitution of the United States, is unfounded. We deem it impossible that this Honorable Court would find deprivation of due process where a plaintiff's case is dismissed or found to have no merit on the ground that the plaintiff sued the wrong defendant, against whom plaintiff had no cause of action. Moreover, Petitioners admittedly rendered no service for the compensation which they claimed.

ARGUMENT

This case is not a sequel to *Steele v. Louisville & Nashville Railroad Co., B. L. F. & E., et al., 65 Sup. Ct. 266, 323 U. S. 192, 89 L. Ed. 173,* (1944), as appears from the following quotation at page 178 of *89 L. Ed.*, and discussion hereunder:

> "The question is whether the Railway Act (June 21, 1934), 48 Stat. 1185, c691, 45 U. S. C. A., Secs. 151 et seq., 10 A. F. C. A. Title 45, Secs. 151, et seq., imposes on a labor organization, acting by authority of the Statute as the exclusive *bargaining* representative of a craft or class of railway employees, the duty to represent all the employees in the craft *without dis-*

> *crimination because of their race*, and if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation." (Emphasis added.) (R. 85.)

In the *Steele case*, the Brotherhood entered into an agreement with the employer which would ultimately exclude all Negro firemen from the service. The case was one of racial discrimination by the union in negotiating a collective bargaining contract under the Railway Labor Act. The duties imposed by the *Steele case* are confined to collective bargaining and making contracts with the carrier, which is shown by the following quotation from *323 U. S. 204*, also quoted at page 22 of Petitioners' brief:

> "So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft. While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, *in collective bargaining and in making contracts with the carrier*, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially and in good faith." (Emphasis added.)

There is no question of collective bargaining with an employer in the case at bar. This is merely a dispute within the Brotherhood over the payment of award money, decided adversely to Petitioners under the State law of agency. The discrimination in the *Steele case* was discrimination by the union itself as agent, not by joint agents of both Brotherhood and Petitioners. The holding of the Court of Civil Appeals of Texas indicates that in the case at bar

the fraud, if any, was by joint agents, not by the Brotherhood itself, the Brotherhood not being the agent of Petitioners in this case. (R. 79-80.)

Further, the *Steele case* relied on by Petitioners is not in conflict with this case, as may be readily seen from this Honorable Court's footnote No. 1 found at page 180 of *89 L. Ed.*, referring to the Alabama Supreme Court's opinion:

> "As that Court specifically rested its decision on the sole ground that the Railway Labor Act places no duty upon the Brotherhood to protect petitioners and other Negro firemen from the alleged discriminatory treatment, *the judgment rests wholly upon a Federal ground, to which we confine our review.*" (Emphasis added.) (R. 109.)

Respondent submits that the opinion of the Court of Civil Appeals of Texas shows conclusively that the Texas Court's judgment rests solely on the State law of agency, supported by abundant authority, such as *Kordewick, et al. v. Brotherhood of Railroad Trainmen, et al., 181 F. 2d 963 (1950); McClees v. Grand National Brotherhood of Locomotive Engineers, 59 Ohio App. 477, 18 N. E. 2d 812 (1938); Hromek v. Gemeinde, et al., 238 Wis. 204, 298 N. W. 587 (1941); Koogler, et al. v. Koogler, 127 Ohio St. 57, 186 N. E. 725, [illegible] Ct., (1933); Cheeny v. Clark, 3 Vt. 431, 23 Am. Dec. 219; Huth v. Humboldt Stamm, 23 Am. Dec. 1084, 61 Conn. 227.* These cases hold that a principal may not sue his co-principal for the dereliction of their common agent.

There is no Federal ground warranting review by this Honorable Court. The Railway Labor Act imposes no obli-

gation on the Brotherhood insofar as this case is concerned. The Petitioners are attempting to thrust into the Railway Labor Act provisions which do not exist. The case at bar turns on its own facts and affects no one but the litigants. There is no constitutional issue or question of statutory interpretation in the case. Petitioners, who paid Andrews to make the check of Railroad records (R. 83), have their remedy against Weiss and Andrews, the derelict agents, if they were derelict. (R. 51.)

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for writ of certiorari should be denied.

Respectfully submitted,

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In the

Supreme Court of the United States

OCTOBER TERM, 1950

No. 525

E. L. ALLEN, *et al.*,
Petitioners,

v.

BROTHERHOOD OF RAILROAD TRAINMEN,
Respondent.

PETITIONER'S REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS.

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REPLY BRIEF FOR PETITIONERS

The brief for respondent in opposition to the petition for writ of certiorari filed herein states one point which requires further argument. It is claimed that the question in this case is purely one of the state law of agency.

Respondent's brief fails to leave a dent in the following propositions, presented by Petitioners:

1. The right of minority union members to sue their union for discrimination and bad faith, which right has been secured by the Railway Labor Act and *Steele v. L. & N. Ry. Co., 323 U. S. 192,* has been effectively denied to petitioners by the appellate courts of Texas.

2. This federal right has been denied without even being mentioned.

3. The effect of the judgment below is to deny to all railroad labor union members in Texas the protection from discrimination and bad faith which was secured by the *Steele case* doctrine; and the effect of the judgment below, if accepted generally as the law, will be to deny to 1,084,801 union members (79% of the 1,371,000 railroad workers in the United States) the protection of the *Steele case* doctrine.

The expressed ground which effectively denies this federal right is that when members of an unincorporated association file suit against their association as an entity, they are suing themselves, and their co-principal. The opinion below in effect holds that such suit is not permitted even when the suit is based upon discrimination and bad faith. Reduced to simple terms, the judgment below says this:

> X type of party (member of union) can have *no* cause of action against UVWXYZ type of party (labor union, unincorporated as usual) because of the relationship of X type of party to UVWXYZ type of party.

But the federal government, by enacting and interpreting the Railroad Labor Act, has said this:

> X type of party, under certain circumstances (when discriminated against in bad faith as a minority by UVWXYZ type of party) has a cause of action against UVWXYZ type of party.

Nevertheless, the judgment below persists in its proposition that X type of party can have *no* cause of action against UVWXYZ type of party.

Analyzing the proposition of the judgment below, we see that it is not based on want of jurisdiction of the cause

of action created by federal law, any more than the judgment of the Supreme Court of Alabama was in *Steele v. L. & N. Ry. Co., 323 U. S. 192.* We further see that the judgment below was not based on any procedural requirements of the state. The judgment below was based purely on either of two broad propositions of substantive law: (a) X can have no cause of action against UVWXYZ because in doing so, X would be having a cause of action against himself; (b) X cannot have a cause of action against UVWXYZ because X is a co-principal of UVWXYZ, and one principal cannot have a cause of action against his co-principal for the fraud and discrimination of the agent of both.

The judgment below cites no Texas law in its support. The brief of respondent cites no Texas law in support of the judgment below. Petitioners contend that the judgment below is unsound on both its propositions, UVWXYZ (respondent) having been pleaded by UVWXYZ (R. 13, 14, 19) and having been found by the jury and trial court as the agent of X (petitioners) and having been found to have defrauded and discriminated against X, and these findings of fact having been left undisturbed by the Court of Civil Appeals (R. 47-48), and being as a matter of universal law the agent of X. The fact that UVWXYZ operated through its representatives does not change the fact that it operated as the agent of X. Labor unions, being impersonal entities, must always operate through persons who are their representatives. The union in the *Steele case* was no exception to this fundamental truth,

and the *Steele case* cannot logically be distinguished from the instant case.

Not only was the judgment below unsound, but it was a patently wilfull evasion of the federal statutory and constitutional questions involved, attempting to decide such a federal question on state grounds without any Texas authority and without reference to the supreme federal authority.

But let us assume that the judgment below was sound so far as local rights are concerned, and was not a deliberate evasion of the federal question without authority. The unavoidable question remains:

> Can the state court, exercising jurisdiction over the parties and subject matter maintain that the state law denies all substantive rights to the plaintiff against the defendant and thus deny to plaintiff his cause of action secured against defendant by federal law?

This question should be decided by this Court. It is a question of whether a state court can supersede a doctrine of the United States Supreme Court.

There is no doubt that the Texas courts have authority to find, on the basis of local law, that union members have no state cause of action against their union. But in this case, the state court, on the basis of alleged local law, has found that union members have no state or federal cause of action against their union, and this finding is in the face of a United States Supreme Court ruling that union members do have a federal right against their unions. *Steele v. L. & N. Ry. Co., 323 U. S. 204.*

Along with the question of whether a state court can substantively supersede a doctrine of the U. S. Supreme Court must be decided the question of whether the ruling of the *Steele case* will be confirmed as to union members, or the *Steele case* dictum as to union members will be rejected.

Petitioners submit that this question is of tremendous importance to the nation, and should be thoroughly considered by this Court.

Petitioners further submit that the authorities support a finding that unincorporated union members may sue their union regardless of the effect of the Railway Labor Act. But even if the authorities do not support such a finding, the impact of the Railway Labor Act upon the unions should lead to the conclusion that security from discrimination and bad faith is available to union members, as well as non-members, by civil action against the wrong-doing union.

Inasmuch as the *Steele case* states that both members and non-members may sue the union, itself, for discrimination and bad faith, and the judgment below bars such actions, that judgment denies a right. Every right involves a cause of action against a party, and every time a cause of action against a party is denied, a right is denied. It is small comfort to union members that other rights remain to them in the form of causes of action against the persons who represent the unions in the discriminatory acts. The union members, by the effect of the judgment below, are reduced to the same position that

would be held by a man who, when injured by the negligence of a truck driver in the course of the truck driver's employment for a company, would be denied the right to sue the company but would be permitted to sue only the truck driver.

CONCLUSION

The judgment below should be reviewed because it retracts an important federal right from most of the citizens to whom that right had been secured by the *Steele case*, and in doing so, the judgment below decides an important federal question without reference to the controlling federal authority. The question thus cursorily decided is one of great import to the economy of the nation and to the civil rights of at least one million citizens.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari to review the judgment of the court below, should be granted.

Respectfully submitted,

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